TENG FUH HOLDINGS PTE. LTD.

v.

THE COLLECTOR OF LAND REVENUE, SINGAPORE & ANOTHER CASE

HIGH COURT, SINGAPORE
LAI KEW CHAI J
LP THEAN J
FA CHUA J
[CIVIL APPEAL NO. 9 OF 1987 & 86 OF 1985]
22 AUGUST 1988

LAND LAW: *Acquisition of land - Relevant market value in assessing compensation payable - Section 33(1)(a), Land Acquisition Act 1965 applied.*

There were two separate appeals in respect of decisions by the Land Acquisition (Appeal Board). In the first appeal, three pieces of land were acquired by the government pursuant to a gazette notification on 26 February 1983. The said lands were purchased by the appellants on 12 August 1982 at a purchase price of $3.5 million. That sum was accepted for the purposes of assessing the stamp duty payable. The Collector of Land Revenue awarded compensation in the sum of $3.5 million on 27 October 1983 which was affirmed by to the Land Acquisition (Appeals Board).

In the second appeal, the appellant purchased the land for $320,000 on 22 October 1980 from the official assignee at an auction. The said land was acquired by the government pursuant to a gazette notification on 12 May 1982. The Collector of Land Revenue awarded the sum of $320,000 as compensation which was affirmed by the Land Acquisition (Appeals Board). The issue was the construction of ss. 33(1)(a) and (5)(d), Land Acquisition Act 1985 to determine the market value of the land.

Held:

[1] The Land Acquisition (Appeals Board) was in error in deciding that the awards payable to the appellants was limited to the values stated in their respective conveyances. Section 33(1)(a), Land Acquisition Act 1985 prescribed three market values of land *inter alia* the market value as at 30 November 1973 and the date of publication of the gazette notification to acquire the land and provided that the lowest of the three market values was to be adopted in awarding compensation. The market value in respect of the land in the first appeal which was relevant was the market value as at 30 November 1973 which was $4.2 million. The market value in respect of the land in the second appeal which was relevant was the market value is at 30 November 1973 which was $601,269.49. Section 33(5)(d) did not apply in this case.

[Appeal allowed.]

Case referred to:
Duport Steels Ltd. v. Sirs [1980] 1 All ER 529

Legislation referred to:
Land Acquisition Act (Cap 152) [Sing], ss. 5, 33(1)(a), (5)(d)

Other source referred to:
Halsbury's Laws of England, 4th Edn., Vol. 44, para. 857

Counsels in CA 9/87
For the appellant - Laurence John Wee (Dora Cheok with him)
For the respondent - M. Karthigesu (A. Karthigesu with him)

Counsels in CA 86/85
For the appellant - Ng Kai Ming
For the respondent - Joseph Hoo

JUDGMENT

Lai Kew Chai J:

We heard together Civil Appeal No. 9 of 1987 ("the first appeal") and Civil Appeal No. 86 of 1985 ("the second appeal") as they both raised common questions of construction of subsection 33(5)(d) of the Land Acquisition Act Chapter 152, Revised Edition 1985 ("the Act"). At the conclusion of the hearing, we allowed both appeals with costs, set aside the orders of costs below which were made against the appellants and ordered that the appellants in the first appeal ("the first appellants") be awarded the sum of $4.2 million and that the appellant in the second appeal ("the second appellant") be awarded the sum of $601,269.49. The latter award was based at the rate of $1.75 p.s.f. which the respondent agreed to if the appeals succeeded as a matter of construction. We now give our reasons.

The Agreed Facts

We set out separately the agreed facts of the two appeals. In the first appeal, three pieces of land known as Lots 398, 348 and 350 of Mukim 25, Geylang, containing an area of 9,746.3 sq. metres, were acquired by the government under the Act. On 17 March 1979 the first appellants were granted an option by Firestone (S) Pte Ltd. to purchase the acquired lands for the sum of $3.5 million. For reasons not conveyed to us, the first appellants, in spite of having exercised the option, entered into a contract with the vendors dated 15 March 1982. On 2 August 1982 the sale and purchase of the land was completed and the first appellants took a transfer, a conveyance and an assignment all dated 12 August 1982. These instruments of transfer, the total consideration of which was agreed to be $3.5 million (rounded up), were presented to the Commissioner of Stamp Duties in the Stamp Office under the Stamp Duties Act Chapter 312, Revised Edition 1985, and the consideration stated in them were accepted by the Commissioner of Stamp Duties for the purpose of assessing the stamp duties payable thereon.

By a Government Gazette Notification dated 26 February 1983 a declaration was made under s. 5 of the Act that the lands of the first appellants were needed for a public purpose. An inquiry was duly conducted under the Act and the Collector of Land Revenue made an award dated 27 October 1983 in the sum of $3.5 million. The Collector of Land Revenue acted under subsection 33(5)(d) of the Act. It was agreed that the market value of the lands of the first appellant as at 30 November 1973 was $4.2 million within the meaning of subsection 33(1)(a) of the Act. As the market value of the said lands as at the date of the said Gazette Notification, that is on 26 February 1983, within the meaning of subsection 33(1)(a) of the Act was far in excess of the market value as at 30 November 1973 of $4.2 million, it was accepted by all concerned that that market value was irrelevant for the purposes of this appeal. Not satisfied with the award of the Collector of Land Revenue, the first appellants appealed to the Land Acquisition (Appeals Board). The appeal was dismissed on the ground that the amount of compensation could not under subsection 33(5)(d) of the Act exceed the value which had been stated in the said conveyances and other instruments of transfer.

We now set out the agreed facts of the second appeal. On 22 October 1980 the second appellant took a conveyance of that date of the subject land at the price of $320,000 (or at $0.93 psf) pursuant to a purchase from the official assignee at an auction. The conveyance

was duly stamped under the Stamp Duties Act Chapter 312, Revised Edition 1985. On 12 May 1982 the land was declared in a Government Gazette Notification to be needed for a public purpose under s. 5 of the Act. It was common ground that the market value of the acquired land as in November 1973, within the meaning of sub-section 33(1)(a) of the Act, was $1.75 p.s.f. (or $601,269.49). As the agreed market value of the said land at the date of the publication of the declaration under s. 5 of the Act was $2 p.s.f. and was therefore higher it was also agreed that this higher market value was irrelevant for the purposes of this second appeal. Claiming that sub-section 33(5)(d) of the Act was applicable, the Collector of Land Revenue awarded the second appellant the sum of $320,000 as compensation. This award was affirmed by the Land Acquisition (Appeals Board) in an appeal by the second appellant.

The Statutory Provisions

Before we turn to the submissions of both appellants, we should now set out the relevant provisions of the Act.

Sub-section 5(1) states:

> Whenever any particular land is needed:
>
> (a) for any public purpose;
>
> (b) ... or
>
> (c) ...
>
> the president may, by notification published in the Gazette, declare the land to be required for the purpose specified in such notification.

Sub-section 5(3) states:

> The notification shall be conclusive evidence that the land is needed for the purpose specified therein as provided in sub-section (1).

Before we set out the relevant provisions of s. 33 of the Act we should observe that by Act 2 of 1988, which came into force on 12 February 1988, the market value of any land acquired on or after 30 November 1987 shall be the market value as at 1 January 1986. These amendments were not relevant in these appeals. We therefore considered the statutory provisions before the amendments.

The relevant provisions of s. 33 prior to the amendments were as follows:

> 33(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall, subject to sub-sections (2), (3) and (4), take into consideration the following matters and no others:
>
> (a) the market value as at 30 November 1973, or the market value as at the date of the publication of the notification under s. 3(1) if the notification is within 6 months from the date thereof followed by a notification under s. 5 in respect of the same land or part thereof, or the market value as at the date of the publication of the notification made under s. 5, whichever is the lowest;
>
> (b) - (f) ...
>
> (2) ...
>
> (3) ...
>
> (4) ...

(5) For the purposes of subsection (1)(a)

(a) ...

(b) ...

(c) ...

(d) if any land in respect of which a value has been stated by or with the knowledge or consent of the owner thereof in any affidavit, return or other document required to be made or delivered to any public officer under the provisions of any written law and accepted by him at that value for the purposes of assessing the tax or duty payable thereon where the statement was made within two years of the date of the notification under s. 5(1) in respect of the land, the market value of the acquired land **at the date of the statement** shall be deemed not to exceed the value therein contained; (the emphasis is ours)

(e) ... and

(f) ...

Issues of construction

Both appellants before us contended, as they did before the Land Acquisition (Appeals Board), that sub-section 33(5)(d) of the Act was not applicable to them because that subsection in clear and unambiguous terms provided that "the market value of the acquired land **at the date of the statement** shall be deemed not to exceed the value' contained in the respective conveyances or other instruments of transfer which they took for their lands. Their Counsel submitted that the critical words underlined, namely "at the date of the statement", therefore meant and could only mean the market values of their respective lands at the respective dates of their conveyances, namely 2 August 1982 in the case of the first appellants and 22 October 1980 in the case of the second appellant, and that since neither of these dates fell on 30 November 1973 within the meaning of sub-section 33(1)(a) of the Act it was an error of interpretation on the part of the Collector of Land Revenue and the Land Acquisition (Appeals Board) to have deemed, as they did, that the market value of their lands shall not exceed the consideration or prices stated in their respective conveyances or other instruments of transfer.

It was fairly admitted by Counsel for both appellants that their interpretation of subsection 33(5)(d) had the effect of limiting the scope of operation of the subsection to only those cases where the dates of the statement coincided with any of the three dates on which the market values of acquired lands shall be taken into consideration under sub-section 33(1)(a) of the Act. They also fairly conceded that in reality such coincidences of the relevant dates would be rare. However, they stressed that

> if the words of a statute are clear and unambiguous, they themselves indicate what must be taken to have been the intention of parliament, and there (was) no need to look elsewhere to discover their intention or their meaning

quoting from *Halsbury's Laws of England*, 4th Edn., Vol. 44, para. 857.

Counsel for the first appellants emphasised that it was the duty of a Court to give effect to an enactment which is grammatically capable of one meaning only and that it was no part of a Court's function on any perceived policy consideration to ignore or delete plain words in a statute to find an ambiguity when, as in these appeals, there was none. Counsel relied on *Duport Steels Ltd. v. Sirs* [1980] 1 All ER 529, where Lord Diplock said at p. 541:

> Where the meaning of the statutory words is plain and unambiguous it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.

In reply, Counsel for the respondent in the first appeal frankly admitted that the critical words, namely "at the date of the statement", did qualify or limit, albeit unwittingly, the market value referred to in sub-section 33(5)(d) of the Act and that it was a piece of poor draftsmanship. He contended that by that subsection it was tolerably clear that Parliament had intended to provide that where the value of any acquired land had been stated within a specified period by or with the knowledge or consent of its owner in writing of the type described pursuant to any written law to a public officer who accepted that value for the purposes of assessing the tax or duty payable thereon the market value to be fixed as compensation for its acquisition should not exceed the value so stated. He further pointed out that it could not have been the intention of Parliament that the operation of the subsection should be drastically confined to the market value "at the date of the statement."

We rejected the argument of Counsel for the respondent. We do not find any ambiguity in s. 33(5)(d); nor do we agree that there was an error in the drafting of para. (d) by the presence of the words, "at the date of the statement." In our opinion, the intention of the Legislature is clearly reflected in s. 33(1)(a) and s. 33(5). Section 33(1)(a) prescribes three market values of the land acquired, namely: (i) the market value as at 30 November 1973, (ii) the market value as at the date of the publication of the Notification under s. 3(1) if the Notification is within 6 months from the date hereof followed by a Notification under s. 5 in respect of the same land or part thereof, and (iii) the market value as at the date of the publication of the Notification made under s. 5, and provides that in determining the amount of compensation to be awarded for the land acquired under the Act, the lowest of the three market values is to be adopted and taken into consideration. The provisions of s. 33(5) are an aid to s. 33(1)(a): they set out the factors enumerated in paras. (a) to (f) which are to be disregarded or taken into account, as the case may be, in assessing the market values under s. 33(1)(a). Paragraph (d) of s. 33(5) sets out a relevant factor which must be taken into account if the fact as stated therein occurs. Briefly, if a statement as to the value of the land acquired has been made in the circumstances described in para. (d), then that value so stated is relevant and aids in assessing the market values under s. 33(1)(a) in this way: the market value of the land at the date of the statement is deemed not to exceed that value. Needless to say, the market value of land fluctuates from time to time; at that date it could or may be less than the stated value, but by the operation of s. 33(5)(d) it cannot be more. That statement has the effect of limiting the market value of the land as of that date, and precludes the owner or other interested party from claiming that, notwithstanding the statement, the market value at that date was more than that stated in the statement. It is true that construed in this manner para. (d) of s. 33(5) has a limited operation, but the same is true of all the other paragraphs, namely, (a), (b), (c), (e) and (f) of s. 33(5). Whether any of these paragraphs applies in aiding the assessment of the market values of the land under s. 33(1)(a) depends on whether the contingency stated there has occurred. Paragraph (d) of s. 33(5) is not intended to substitute the relevant market value under s. 33(1)(a).

In both the appeals, the market values of the lands as at 30 November 1973 were agreed upon. It was also agreed that the market values as at the date of the notification made under s. 5 were higher. The parties therefore had assessed and determined these market values. In consequence, assuming that the considerations as stated in the conveyances and instruments

of transfer represented the values as at the respective dates, these values must be deemed to have been taken into account by the parties concerned and assisted them in arriving at the market values as at 30 November 1973 and as at the date of the notification. In the result, the Collector of Land Revenue and the Land Acquisition (Appeals Board) were in error in holding that the awards payable to both appellants were limited to the values stated in their respective conveyances or other instruments of transfer.

We now turn to an alternative construction of s. 33(5) which was canvassed only on behalf of the second appellant. It concerned the words "other document" in sub-section 33(5)(d). Counsel for the second appellant submitted that the second appellant had purchased the land in an auction from the official assignee and that therefore there could be no question of any under-declaration of the value or consideration paid for the land. It was further pointed out that consideration stated in the conveyance was not stated by or with the knowledge or consent of the second appellant. Finally, it was observed that an affidavit or a return referred to in the subsection and which preceded the words "or other document" were in nature kind of documents which were unilaterally made by one party and that applying the principle of *ejusdem generis* the expression "other document" could not as a matter of construction include a conveyance which arose as a result of a bilateral agreement.

We rejected these submissions. The subsection was not in terms limited to only cases of any under-declaration of value. Whether or not there was any under-declaration, the value stated, was intended to be an aid in determining the compensation payable. As to the application of the canon of construction expressed in the Latin phrase, *ejusdem generis*, which means "of the same kind", what this requires is that where general words follow an enumeration of particulars the general words are understood as limited to general categories of the same general kind as the particulars. As the "affidavit" or "return" does not belong to any general category, this canon of construction has no application at all.

Finally, we would now consider another aspect of the construction of sub-section 33(5)(d) of the Act. In the course of arguments, we observed that it did not appear to us that the consideration or price paid for the purchase of land and as expressed in a conveyance or other instruments of transfer was necessarily the "value" of his land for the purposes of sub-section 33(5)(d); nor could the purchaser be inevitably regarded as accepting it as such. We observed that not every consideration stated in a conveyance reflected the "value" of the land so far as the purchaser was concerned. What prompted us to make the observation was the undisputed fact that in both appeals the prices paid for by both appellants were significantly lower than the market values of their lands years earlier on 30 November 1973, as was agreed by the respondents. On these evidence, the inescapable conclusion was that both appellants had acquired their lands at bargain prices many years after 30 November 1973 and it seemed to us quite unwarranted on the evidence to assume, as was done in these cases, that by the consideration stated in their conveyances or other instruments of transfer both the appellants were stating the "value" of their land within the meaning of sub-section 33(5)(d). We understood both appellants to have adopted this view of the evidence and they contended that both appellants did not state nor permit to be stated with their knowledge or consent the "value" of their lands within the meaning of sub-section 33(5)(d).

In reply, Counsel for the respondents could only say that the use of the word "value" was again either inapt or the subsection should have included some form of words to cover the consideration or price stated in a conveyance or other instruments of transfer. Counsel, of course, pointed out that the appellants had tendered their conveyances or other instruments

of transfer for purposes of stamping under the Stamp Duties Act. In our view, the act of tendering the conveyances for stamping was quite neutral and innocuous and such tender could not amount to representing or allowing to be represented the "value" of the land in question for the purposes of the subsection. Such tender for stamping was to pay the *ad valorem* stamp duty for the consideration paid and there was the process of adjudication under the Stamp Duties Act if the consideration stated was considered to be inadequate. In the end, we came to the conclusion that in these appeals we were not satisfied on a balance of probabilities that by stating the consideration in the relevant conveyances or other instruments of transfer, which were significantly lower than 30 November 1973 market values as agreed by the respondents, the appellants had stated or had with their knowledge or consent allowed to be stated the "value" of their lands within the meaning of sub-section 33(5)(d).

For the reasons stated above we allowed both the appeals and made the orders we did.

Also found at [1989] 1 CLJ 883